REMARKS

Applicants have received and carefully reviewed the Final Office Action mailed March 9, 2005. Claims 49-69 remain pending, claims 1-48 having been cancelled without prejudice. Reconsideration and reexamination are respectfully requested.

Applicants would like to thank the Examiner for the courtesies extended during a telephone interview on April 25, 2005, with Applicants' representative, Mark R. Schroeder, Reg. No. 53,566. The cancellation of claims 1-48 was proposed, and application of the pending rejections to the methods recited in claims 49-69 was discussed. Reasoning similar to that presented herein was discussed, but no agreement could be reached at that time. Fuller explanation of Applicants' position is set forth below.

Each of the pending claims stands rejected under either 35 U.S.C. §102(b) or 35 U.S.C. §103(a) in view of the teachings of U.S. Patent No. 5,978,703 to Kroll et al. These rejections are sufficiently similar to that previously presented that a review is in order.

In the previous amendment, Applicants set forth an explanation that the methods suggested in Kroll et al. were not methods for pacing, which was recited in each claim in various forms. Kroll et al. go so far as to distinguish their methods from pacing methods. Applicants refer to the December 17, 2004 Amendment for those remarks.

The Examiner has not disputed this explanation of Kroll et al., but has instead found it unpersuasive with respect to the present claims. In section 5 of the most recent Office Action, the Examiner states that the portions of the claims reciting "pacing" are merely statements of intended use. Applicants do not concede the correctness of this rejection with respect to the device claims. However, to reduce the issues at hand and focus the case, Applicants have cancelled the previously pending device claims, such that only the method claims are pending.

It is a known patent concept that a new use for an old device may be patentable. In the present application, the device claims have been withdrawn, leaving only method claims. It is believed that the recited methods are themselves new and that the claims recite methods drawn to new uses of devices.

Independent claims 49 and 53-55 recite a method for supplying power for an ICD, the method including the steps of:

generating anti-bradycardia pacing energy;

storing the anti-bradycardia pacing energy; and
delivering the anti-bradycardia pacing energy to the patients heart;

It is believed that one of skill in the art would understand that at least the step of "delivering the anti-bradycardia pacing energy to the patients heart" includes various steps that are known and understood as being part of pacing delivery. In particular, therapeutic pacing stimulus is only applied during certain portions of the patient's cardiac cycle. Improperly timed delivery of pacing energy will not cause depolarization and will not achieve pacing.

Those of skill in the art will understand and infer from the recited claim elements that pacing is performed, with the attendant sensing and timing issues that arise during such therapy. The repeated references to anti-bradycardia pacing energy make that clear. Therefore it is believed that the recited methods are not appropriate for the "intended use" analysis that the Examiner has proposed.

In light of the above remarks, it is believed that each of the pending method claims, specifically claims 49-69, is patentable over the stated objections.

Reexamination and reconsideration are respectfully requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

Gust H. Bardy et al.

By their Attorney,

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